THE HON'BLE Ms. JUSTICE G.ROHINI

WRIT PETITION NO: 449 of 2007

Dated: 05-01-2007

Between:

Anwar ali Dawood

..... PETITIONER

AND

The Executive Engineer (R & B),
Vikarabad and another.

.....RESPONDENTS

THE HON'BLE Ms. JUSTICE G.ROHINI

WRIT PETITION NO: 449 of 2007

O R D E R:

This writ petition is filed seeking a declaration that the action of the respondents in demolishing the building bearing No.M.No.4-1-760, Alampally Road, Vikarabad Town for the purpose of road widening without any notice to lawful owner as arbitrary and illegal.

It is not in dispute that the premises in question belongs to the mother of the petitioner by name Smt. Haneefa Bee. It is stated that Smt. Haneefa Bee died on 23-10-1991 and thereafter the petitioner continued in possession and enjoyment of the premises in question. When the 1st respondent herein proposed to demolish some of the structures in Vikarabad Town for the purpose of alleged road-widening, the petitioner along with 29 others filed W.P.No.323 of 2006 contending that the said action without initiating proceedings under the Land Acquisition Act and without notice to the petitioners is arbitrary and illegal. The said writ petition was disposed of by this Court by order dated 04-01-2006 with a direction to the respondents not to demolish the structures in question without following due process of law. Thereafter, the impugned order dated 22-12-2006 was passed holding that Smt. Hneefa Bee had encroached into 204 square feet within 100 feet road which is Government land and accordingly directing her to vacate the encroached Government land to the extent of 200 square feet and handover the vacate possession to the second respondent, failing which the possession will be taken forcibly by evicting the encroacher.

Aggrieved by the said order, this writ petition is filed contending *inter alia* that the mother of the petitioner Smt. Haneefa Bee died long back and the action of the respondents in allegedly issuing a show cause notice in the

name of a dead person and proceeding to pass the impugned order without giving an opportunity to the petitioner is arbitrary and illegal. It is contended that though the petitioner has been in possession for the past about 15 years no opportunity was given to the petitioner at any point of time to put forth his version.

The learned Government Pleader for Roads and Buildings under instructions submitted that the show cause notice dated 13-10-2006 issued in the name of Smt. Haneefa Bee was received by the petitioner on 16-10-2006, but he failed to submit any explanation and therefore the impugned order was passed on the basis of the material available on record.

May be that, a show-cause notice was issued, but admittedly it was issued in the name of a dead person and the fact remains that the impugned order was passed without considering the version of the petitioner. Hence, the impugned order cannot be held to be in conformity with the principles of natural justice and liable to be set aside on that ground alone.

Accordingly, the impugned order is set aside and the Writ Petition is disposed of granting liberty to the petitioner to submit his explanation to the action proposed by the respondents within a period of two weeks from today. If any such explanation is submitted within the time granted above, the same shall be considered and appropriate orders be passed in accordance with law. Till such time, the status quo obtaining as on today shall be maintained. No costs.

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G. ROHINI, J

Dated: 05-01-2007

Note: Issue C.C. by Monday.

B/o

KLP